

## REMARKS

Claims 1-7, 14-21, 34-36 and 39-50 are pending in the application. Claims 16-19, 34-35 and 47-50 are currently amended.

### Election/Restrictions

Claims 7 and 44 were withdrawn from consideration because the Examiner treats these claims as methods claims. Applicant respectfully disagrees. Claims 7 and 44 recite a composition in combination with necrotic tissues, and therefore shall be examined with the composition claims from which they depend. Reconsideration of the election/restriction requirements is respectfully requested.

### Claim Rejections – 35 U.S.C. 112 First Paragraph

Claim 1, 14-21, 34-36, 47 and 50 stand rejected under 35 U.S.C. 112 First Paragraph as failing to comply with the written description requirement. The Examiner maintains that the term “escharotic chelatable metal agent” does not have sufficient support in the Specification as originally filed. Applicant respectfully disagrees because the teachings of the Specification provides ample example to support the claims in their current form. First, the Examiner has not met the initial burden to set forth express findings of fact which support the lack of written description conclusion. See MPEP 2163. The Examiner has not established a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. By generally stating that the Applicant has not described a sufficient number of species, the Examiner does not provide specific explanation as to why the instant application does not teach a sufficient number of species, and how many species would the Examiner deem adequate, and why.

Even if we assume the Examiner has met the initial burden of showing lack of written description, the Examiner’s reasoning fails to recognize the scope of the claimed invention. The term “escharotic chelatable metal agent” is modified both qualitatively and quantitatively in the claims by other limitations. For instance, claim 1 limits the metal to those having an oxidation state of +2. The chelatable metal agent is further

limited by recitation of a concentration of at least five percent by weight of the total composition and less than an amount that produces an eschar in healthy mammalian tissues. Thus, the term “escharotic chelatable metal agent” as used in Claim 1 does not mean ANY metal agent, rather it is limited to a selection of chelatable metal agent with common characteristics at a specific concentration range. The Specification teaches that heavy metal and transition metal are the preferred forms for the metal agent (See page 3-4 of the Specification). The specification also provides examples as to how to quantitatively determine the concentration of the metal agent to reduce escharotic effects while optimizing therapeutic effects (See, e.g., Example 9). Taken together, the list of preferred metals and the embodiments using Zn as an example represent well the claimed class of chelatable metal agent. Withdrawal of the rejection under 35 U.S.C. 112 first Paragraph is respectfully requested.

The Examiner also maintains that the terms “penetrant” and “antioxidants” are not sufficiently supported in the Specification. Claims 16-19, 34-35 and 47-50 have been amended to clarify the terms “penetrant” and “antioxidants” as claimed. Withdrawal of the rejection under 35 U.S.C. 112 first Paragraph with regard to these terms is respectfully requested.

#### **Claim Rejections – 35 U.S.C. 112 Second Paragraph**

Claim 17-18, 39-43, and 45-50 stand rejected under 35 U.S.C. 112 second Paragraph as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 17-18 and 48-49 have been amended to depend from claim 16 and 47, respectively.

Claim 39 stands rejected because the upper limit of the concentration is not specifically set forth in the claim. Applicant respectfully disagrees because a concentration may be defined by a mean plus description of how the mean is carried out. Claim 39 recites zinc chloride in an amount less than that which produces an eschar in healthy mammalian tissues. Example 9 of the Specification teaches how an amount less than that which produces an eschar in healthy mammalian tissues may be determined.

Withdrawal of the rejection under 35 U.S.C. 112 second Paragraph is respectfully requested.

The amended claims are patentable for the above reasons. This response is being filed with fee for the Petition for Extension of Time. Applicant believes that no additional fees are due at this time. However, if any additional fees are due, the Commissioner is authorized to charge them to deposit account No. 12-0600.

Respectfully submitted,

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